

EAST STROUDSBURG AREA SCHOOL DISTRICT

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION IN
SCHOOL AND CLASSROOM
PRACTICE

ADOPTED: August 19, 2001

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May 19, 2008

May 18, 2009

September 19, 2016

103. NONDISCRIMINATION IN SCHOOL AND CLASSROOM PRACTICES

1. Authority
SC 1310
Title 22
Sec. 4.4, 12.1,
12.4, 15.1 et seq
24 P.S.
Sec. 5004
43 P.S.
Title IX
20 U.S.C.
Sec. 1681 et seq
20 U.S.C.
Sec. 6321
29 U.S.C.
Sec. 794
Title VI
42 U.S.C.
Sec. 2000d et seq
42 U.S.C.
Sec. 12101 et seq

The Board declares it to be the policy of this district to provide an equal opportunity for all students to achieve their maximum potential through the programs offered in the schools regardless without discrimination on the basis of race, color, age, creed, religion, gender, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability.

The district strives to maintain a safe, positive learning environment for all students that is free from discrimination. Discrimination is inconsistent with the educational and programmatic goals of the district and is prohibited on school grounds, at school-sponsored activities and on any conveyance providing transportation to or from a school entity or school-sponsored activity.

The school district shall provide to all students, without discrimination, course offerings, counseling, assistance services, employment, athletics and extracurricular activities. The equitable distribution of district resources is one means the district shall use to ensure all students receive a quality education. The district shall make reasonable accommodations for identified physical and mental impairments that constitute handicaps and/or disabilities, consistent with the requirements of federal and state laws and regulations.

The Board encourages students and third parties who believe they or others have been subject to discrimination to promptly report such incidents to designated employees, even if some elements of the related incident took place or originated away from school grounds, school activities or school conveyances.

The Board directs that verbal and written complaints of discrimination shall be investigated promptly, and appropriate corrective action or preventative action be taken when allegations are substantiated. The Board directs that any complaint of discrimination brought pursuant to this policy shall also be reviewed for conduct which may not be proven discriminatory under this policy but merits review and possible action under other Board policies.

2. Definitions

Confidentiality

Confidentiality of all parties, witnesses, the allegations, the filing of a complaint and the investigation shall be handled in accordance with this policy and maintained, ~~consistent with~~ the school district's legal and investigative obligations.

Retaliation

~~The Board prohibits retaliation against any person for making a report of discrimination or participating in a related investigation or hearing, or opposing practices the person reasonably believes to be discriminatory. A complaint of retaliation shall be handled in the same manner as a complaint of discrimination. No reprisals nor retaliation shall occur as a result of good faith charges of discrimination.~~

Discriminatory Harassment

Harassment by students, employees or third parties on the basis of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy, handicap/disability or for participation in reports or investigations of alleged discrimination is a form of discrimination and is subject to this policy. A person who is not necessarily an intended victim or target of such harassment but is adversely affected by the offensive conduct may file a report of discrimination on his/her own behalf.

For purposes of this policy, harassment shall consist of unwelcome conduct such as graphic, written, electronic, verbal or nonverbal acts including offensive jokes, slurs, epithets and name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, physical assaults or threats, intimidation, or other conduct that may be harmful or humiliating or interfere with a person's school or school-related performance and which relates to an individual's or group's race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability when such conduct is:

1. Sufficiently severe, persistent or pervasive; and
2. A reasonable person in the complainant's position would find that it creates an intimidating, threatening or abusive educational environment such that it deprives or adversely interferes with or limits an individual or group of the ability to participate in or benefit from the services, activities or opportunities offered by a school.

Sexual Harassment

Sexual harassment is a form of discrimination on the basis of sex and is subject to

<p><u>2.3.</u> Delegation of Responsibility</p>	<p><u>this policy. For purposes of this policy, sexual harassment shall consist of unwelcome sexual advances; requests for sexual favors; and other inappropriate verbal, nonverbal, written, graphic or physical conduct of a sexual nature when:</u></p> <ol style="list-style-type: none"> <u>1. Submission to such conduct is made explicitly or implicitly a term or condition of a student's status in any educational or other programs offered by a school; or</u> <u>2. Submission to or rejection of such conduct is used as the basis for educational or other program decisions affecting a student; or</u> <u>3. Such conduct deprives a student or group of individuals of educational aid, benefits, services or treatment; or</u> <u>4. Such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance in school or school-related programs, or otherwise creates an intimidating, hostile, or offensive school or school-related environment such that it unreasonably interferes with the complainant's access to or participation in school or school-related programs.</u> <p><u>Federal law declares sexual violence a form of sexual harassment. Sexual violence means physical or sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual may also be unable to give consent due to an intellectual or other disability. Sexual violence includes but is not limited to rape, sexual assault, sexual battery and sexual coercion.</u></p> <p>In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Board designates the Assistant Superintendent(s) for Curriculum and Instruction as the district's Compliance Officer(s).</p> <p>The Compliance Officer shall publish and disseminate this policy and complaint procedure at least annually to students, parents/guardians, employees and the public <u>to notify them of where and how to initiate complaints under this policy.</u> Information relative to special accommodation and or grievance procedure may be obtained by contacting the Compliance Officer, in writing, at the Administration Office, East Stroudsburg Area School District, 50 Vine Street, East Stroudsburg, Pennsylvania 18301 or call (570) 424-8500.</p> <p>The Compliance Officer is responsible to <u>ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to</u></p>
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	<p><u>procedures and to</u> monitor the implementation of <u>the district's</u> nondiscrimination procedures in the following areas:</p> <ol style="list-style-type: none"> 1. Curriculum and Materials – Review of curriculum guides, textbooks and supplemental materials for discriminatory bias. 2. Training – Provision of training for students and staff to <u>prevent</u>, identify and alleviate problems of discrimination. 3. <u>Resources - Maintain and provide information to staff on resources available to alleged victims in addition to the school complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources including counseling resources.</u> 3.4. Student Access – Review of programs, activities and practices to ensure that all students have equal access and are not segregated except when permissible by law or regulation. 4.5. District Support – Assurance that like aspects of the school program receive like support as to staffing and compensation, facilities, equipment, and related matters. 5.6. Student Evaluation – Review of tests, procedures and guidance and counseling materials for stereotyping and discrimination. 7. <u>Complaints - Monitor and provide technical assistance to building principals or designee in processing complaints.</u> <p>The building principal or designee shall be responsible to <u>promptly</u> complete the following duties <u>upon receipt of a report</u>when receiving a complaint of discrimination <u>or retaliation from a student, employee or third party</u>:</p> <ol style="list-style-type: none"> 1. Inform the student or third party of the right to file a complaint and the complaint procedure. 2. Inform the complainant that s/he may be accompanied by a parent/guardian during all steps of the complaint procedure. 3. Notify the complainant and the accused of the progress at appropriate stages of the procedure. 4. Refer the complainant to the Compliance Officer if the building principal is the subject of the complaint.
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	<ol style="list-style-type: none"> <u>1. If the building principal is the subject of the complaint, refer the student to the Compliance Officer to carry out these responsibilities.</u> <u>2. Inform the student or third party about this policy including the right to an investigation of both oral and written complaints of discrimination.</u> <u>3. Obtain consent from parents/guardians to initiate an investigation where the complainant or alleged victim is under age eighteen (18). Inform parents/guardians and students who are complainants or accused of violating this policy that s/he may be accompanied by a parent/guardian during all steps of the complaint procedure.</u> <u>4. Provide relevant information on resources available in addition to the school complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs and community health resources including counseling resources.</u> <u>5. Immediately notify the Compliance Officer of the complaint. The Compliance Officer shall assess whether the investigation should be conducted by the building principal, another district employee, the Compliance Officer or an attorney and shall promptly assign the investigation to that individual.</u> <u>6. After consideration of the allegations and in consultation with the Compliance Officer and other appropriate individuals, promptly implement interim measures as appropriate to protect the complainant and others as necessary from violation of this policy during the course of the investigation.</u>
<p><u>3.4.</u> Guidelines</p>	<p><u>Complaint Procedure – Student/Third Party</u></p> <p>Step 1 – Reporting</p> <p>A student or third party who believes s/he has been subject to conduct <u>by any student, employee or third party</u> that constitutes a violation of this policy is encouraged to immediately report the incident to the building principal. <u>Any person with knowledge of conduct that may violate this policy, is encourage to immediately report the matter to the building principal.</u></p> <p>A school employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building principal, <u>as well as properly making any mandatory police or child protective services reports required by law.</u></p>

	<p>If the building principal is the subject of a complaint, the student, third party or employee shall report the incident directly to the Compliance Officer.</p> <p><u>The complainant or reporting employee may be encouraged to use the district's report form, available from the building principal or Compliance Officer, or to put the complaint in writing; however, oral complaints shall be accepted, documented and the procedures of this policy implemented. The person accepting the verbal or written complaint may provide factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. In all other respects, the person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or those accused of a violation of this policy.</u></p> <p>The complainant or reporting employee is encouraged to use the report form available from the building principal, but oral complaints shall be acceptable.</p> <p>Step 2 – Investigation</p> <p><u>Where an attorney is not used to conduct an investigation into a discrimination complaint, only individuals who have received basic training on the applicable law, this policy and how to conduct a proper investigation shall be authorized to conduct an investigation of a complaint made pursuant to this policy.</u></p> <p><u>The investigator shall work with the Compliance Officer to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.</u></p> <p><u>The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the accused shall be provided the opportunity to present witnesses and other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in school settings.</u></p> <p><u>The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, parents/guardians and witnesses shall be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about</u></p>
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confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Compliance Officer, who shall promptly inform law enforcement authorities about the allegations.

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the incident is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the district's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation.

~~Upon receiving a complaint of discrimination, the building principal shall immediately notify the Compliance Officer. The Compliance Officer shall authorize the building principal to investigate the complaint, unless the building principal is the subject of the complaint or is unable to conduct the investigation.~~

~~The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the incident. The investigator may also evaluate any other information and materials relevant to the investigation.~~

~~The obligation to conduct this investigation shall not be negated by the fact that a criminal investigation of the incident is pending or has been concluded.~~

Step 3 – Investigative Report

The investigator shall prepare and submit a written report to the Compliance Officer within twenty (20) days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation and the availability of witnesses requires the investigator and the Compliance Officer to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and of any other violations of law or Board policy which may warrant further district action, and a recommended disposition of the complaint. An investigation into discriminatory harassment or sexual harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of this policy has occurred, recognizing that persistent and pervasive conduct, when taken

together, may be a violation even when the separate incidents are not severe.

The complainant and the accused shall be informed of the outcome of the investigation, including the recommended disposition within a reasonable time of the submission of the written report. The accused shall not be notified of the individual remedies offered or provided to the complainant.

~~The building principal shall prepare a written report within fifteen (15) days, unless additional time to complete the investigation is required. The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual and whether it is a violation of this policy, and a recommended disposition of the complaint.~~

~~The findings of the investigation shall be provided to the complainant, the accused, and the Compliance Officer.~~

Step 4 –District Action

If the investigation results in a finding that some or all of the allegations of the the complaint are established and is factual and constitutes a violation of this policy, the district shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. will not recur. The district shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the school or school program environment. District staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with the Student Code of Conduct, Board policies and district procedures, applicable collective bargaining agreements, and state and federal laws.

Appeal Procedure

1. If the complainant or the accused is not satisfied with a finding made pursuant to of no violation of the policy or with the recommended corrective action recommended in the investigative report, s/he may submit a written appeal to the

	<p>References:</p> <p>School Code – 24 P.S. Sec. 1301A, 1310, 1601-C et seq.</p> <p>State Board of Education Regulations – 22 PA Code Sec. 4.4, 12.1, 12.4, 15.1 et seq.</p> <p>Unfair Educational Practice – 24 P.S. Sec. 5004</p> <p>Pennsylvania Human Relations Act – 43 P.S. Sec. 951 et seq.</p> <p>No Child Left Behind Act – 20 U.S.C. Sec 6321</p> <p>Section 504 of the Rehabilitation Act – 29 U.S.C. Sec. 794</p> <p>Americans With Disabilities Act – 42 U.S.C. Sec. 1981 et seq., 2000d et seq., 12101 et seq.</p> <p>Federal Anti-Discrimination and Civil Rights Laws – 20 U.S.C. Sec 1681 et seq. (Title IX)</p> <p>42 U.S.C. Sec. 2000d et seq. (Title VI)</p> <p>Federal Anti-Discrimination and Civil Rights Regulations – 28 CFR Part 35, Part 41 and 35 CFR Part 100, Part 104, Part 106, Part 110</p> <p>29 CFR 1604.11, 1606.8</p> <p>18 Pa. C.S.A. 2709</p> <p>U.S. Const. Amend. XIV, Equal Protection Clause</p> <p>Board Policy – 000, 103.1, 122, 123, 218, 247, 249, 701, 806, 815, 906</p>
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